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Proposed Counsel to the GK8 Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
)	
CELSIUS NETWORK LLC, <i>et al.</i> , ¹)	Case No. 22-10964 (MG)
)	
Debtors.)	(Jointly Administered)
)	

NOTICE OF FILING OF FEBRUARY 6, 2023, HEARING PRESENTATION

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file the presentation (the “Presentation”), attached hereto as **Exhibit A**, that will be used at the hearing that will take place on **Monday, February 6, 2023 at 2:00 p.m., prevailing Eastern Time** (the “Hearing”) before the Honorable Martin Glenn, Chief

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Celsius Network LLC (2148); Celsius KeyFi LLC (4414); Celsius Lending LLC (8417); Celsius Mining LLC (1387); Celsius Network Inc. (1219); Celsius Network Limited (8554); Celsius Networks Lending LLC (3390); Celsius US Holding LLC (7956); GK8 Ltd. (1209); GK8 UK Limited (0893); and GK8 USA LLC (9450). The location of Debtor Celsius Network LLC’s principal place of business and the Debtors’ service address in these chapter 11 cases is 50 Harrison Street, Suite 209F, Hoboken, New Jersey 07030.

United States Bankruptcy Judge of the United States Bankruptcy Court for the Southern District of New York.

PLEASE TAKE FURTHER NOTICE that copies of the Presentation and other pleadings filed in the above-captioned chapter 11 cases may be obtained free of charge by visiting the website of Stretto at <http://www.cases.stretto.com/celsius>. You may also obtain copies of any pleadings by visiting the Court's website at <http://www.nysb.uscourts.gov> in accordance with the procedures and fees set forth therein.

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New York, New York
Dated: February 6, 2023

/s/ Joshua A. Sussberg

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Counsel to the Initial Debtors and Debtors in Possession
Proposed Counsel to the GK8 Debtors and Debtors in Possession

Exhibit A

Presentation



In re Celsius Network LLC

**Evidentiary Hearing
Briefed Legal Issue**

**Case No. 22-10964
United States Bankruptcy Court for Southern District of New York
Honorable Judge Martin Glenn
February 6, 2023**

Terms of Use: Key Defined Terms

Section 1 defines “*Celsius*” as “*Celsius Network LLC and its Affiliates*”

Celsius Network LLC and its Affiliates (collectively, “we,” “our,” “us”, or “Celsius”) provide the following Terms of Use that, as they may be modified from time to time by Celsius in its sole discretion (the “Terms”) apply to our users (“you” or “User(s)”) and govern each User’s access to, and use of, Celsius’ products and services as well as our mobile and web-based

Section 2 defines “*Affiliates*”

“Affiliate” means an entity that owns or controls, is owned or controlled by, or is or under common control or ownership with a party, where control is defined as the direct or indirect power to direct or cause the direction of the management and policies of such party, whether through ownership of voting securities, by contract, or otherwise.

Terms of Use: "Celsius" Obligation

Section 4B: General Services

Your Celsius Account allows you to view your balances in connection with the Services provided to you by Celsius and access the Services and conduct certain transactions online. You are solely responsible for the activities under

CELSIUS MAY RESTRICT SERVICES IN CERTAIN JURISDICTIONS DUE TO APPLICABLE LAWS, REGULATIONS, AND BUSINESS CONSIDERATIONS, AT ITS SOLE DISCRETION. ANY SERVICES

Section 11: Repayment of Digital Assets

Subject to these Terms, for any of your Eligible Digital Assets that you elect to utilize in the Earn Service (if available to you), you have a call option on all loans made to Celsius to demand immediate, complete or partial repayment of any loan at any time through (i) transfer to a Custody Wallet, if available to you, or (ii) a complete or partial withdrawal of Eligible Digital Assets at any time. Such repayment will terminate in whole or in part your loan to Celsius and you shall no longer accrue Rewards on the amount of loans as of the time of your exercise of the call option. Celsius initiates the withdrawal process immediately following a withdrawal request when possible; however, we may

Section 4D: Earn Services

Our Earn Service allows you to earn a financing fee from Celsius, referred to as "Rewards," in the form of Digital Assets (either in-kind, i.e., in the same Digital Asset you transfer, or in CEL Tokens, where permitted) in exchange for entering into open-ended loans of your Eligible Digital Assets to Celsius under the terms hereof. If our Earn Service is available to you, upon your election, you will lend your Eligible Digital Assets to Celsius and grant Celsius all rights and title to such Digital Assets, for Celsius to use in its sole discretion while using the Earn Service.

Section 4A: Custody Services

When you use the Custody Service, you understand and agree that Celsius may act as the custodian or we may use a Third Party Custodian to provide the Custody Service. Celsius will inform, update, and/or obtain your consent in

Terms of Use: Rights in a Bankruptcy

Section 13 describes rights of account holders in the event of bankruptcy of “*Celsius*”:

In the event that Celsius becomes bankrupt, enters liquidation or is otherwise unable to repay its obligations, any Eligible Digital Assets used in the Earn Service or as collateral under the Borrow Service may not be recoverable, and you may not have any legal remedies or rights in connection with Celsius’ obligations to you other than your rights as a creditor of Celsius under any applicable laws.

Section 25: Limitation of Liability

Section 25 of the Terms of Use makes clear the account holders have *recourse against “Celsius”*

We are not liable to you for claims, costs, losses or damages caused by an event that is beyond our reasonable control (e.g. the acts or omissions of third parties, natural disaster, emergency conditions, government action, equipment or communications malfunction). We are not liable for special, incidental, exemplary, punitive or consequential losses or damages of any kind. Except for any setoff permitted by applicable law and Section 9 of these Terms, any obligations of ours may be satisfied solely from the assets of Celsius. Without limiting the generality of the foregoing, in no event shall you have any recourse, whether by setoff or otherwise, with respect to our obligations, to or against any assets of any person or entity other than Celsius, including, without limitation, any member, shareholder, Affiliate, investor, employee, officer, director, agent or advisor of Celsius. For the avoidance of doubt, the foregoing shall not limit any setoff permitted by applicable law and Section 9 of these Terms.

Section 25: Limitation of Liability

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Series B Opening Brief

2. The Terms of Use⁴ unequivocally answer that question in the “Indemnification and Limitation of Liability” provision (the “Limitation of Liability”) thereof, which states:

in no event shall you [(the Customer)] have any recourse, whether by setoff or otherwise, with respect to our obligations, to or against any assets of any person or entity other than Celsius, including, without limitation, *any* member, shareholder, *Affiliate*, investor, employee, officer, director, agent or advisor of Celsius.⁷

“Affiliate” is broadly defined as “an entity that . . . is under common control or ownership with . . . [LLC];”⁶ which includes CNL.⁷ Accordingly, under a plain reading of the Terms of Use, Customers have *no recourse against* CNL or any other Affiliate of LLC.

Series B Response Brief

7. The Briefed Legal Issue is which Debtors are liable to Customers under the Terms of Use. The Limitation of Liability provision of the Terms of Use unambiguously answers this question: LLC. Section 25 of the Terms of Use (the Limitation of Liability) explicitly states that:

in no event shall you [the Customer] have any recourse . . . to or against any assets of any person or entity other than Celsius, including, without limitation *any . . . Affiliate . . . of Celsius*.¹⁴

Under the plain reading of that operative provision, Customers do not have any recourse against any Affiliate, meaning that LLC is the only Debtor liable to Customers.

Limitation of Liability

We are not liable to you for claims, costs, losses or damages caused by an event that is beyond our reasonable control (e.g. the acts or omissions of third parties, natural disaster, emergency conditions, government action, equipment or communications malfunction). We are not liable for special, incidental, exemplary, punitive or consequential losses or damages of any kind. Except for any setoff permitted by applicable law and Section 9 of these Terms, any obligations of ours may be satisfied solely from the assets of Celsius. Without limiting the generality of the foregoing, in no event shall you have any recourse, whether by setoff or otherwise, with respect to our obligations, to or against any assets of any person or entity other than Celsius, including, without limitation, any member, shareholder, Affiliate, investor, employee, officer, director, agent or advisor of Celsius. For the avoidance of doubt, the foregoing shall not limit any setoff permitted by applicable law and Section 9 of these Terms.

Series B Citations to the Terms of Use

Section 2E: Borrow Service

You may apply to borrow certain Fiat currencies or Stablecoins from an **Affiliate of Celsius**, as will be agreed between you and **Celsius or its Affiliates** in writing, against Eligible Digital Assets in your Celsius Account (each, a “Loan”). If approved, such application shall be subject to a separate agreement to be entered into between you and the **Celsius Affiliate** (the “Loan Agreement”), and Celsius or its Affiliates shall hold the Digital Assets provided as collateral under the Loan Agreement for the benefit of the Lender

Series B Citations to the Terms of Use

Section 19: Closing an Account

deletion of your information or Celsius Account data. You acknowledge that any legal obligations you may have under any other agreement with Celsius or its Affiliates (including any Loan Agreement or agreement governing lending or investing in Celsius or its Affiliates) will not be affected in any way by the termination of these Terms and any such other agreement between you and Celsius will continue to be in effect in accordance with its terms.

Section 9: Security Interest Grant

You grant us a security interest in any and all Eligible Digital Assets using the Earn Service for debts, amounts owed, or liabilities incurred to us or any of our Affiliates by you or any of your Authorized Representatives, if any ("Obligations"). Obligations may include both secured and unsecured debts, and Obligations you owe individually or together with someone else, including Obligations under other transactions or agreements between you and us or any of our Affiliates.

Section 4F: CelPay Services

By entering into any CelPay transaction you explicitly authorize Celsius or its Affiliates to deduct such amounts of Eligible Digital Asset as you instruct us to transfer to another user from your Celsius Account, and to be added to the balance of the Celsius Account of such other User. Conversely, by accepting

Series B Citations to the Terms of Use

Series B Response Brief

14. Similarly, Section 32 (Assignment) provides that “Celsius may assign or transfer these Terms and/or any or all of its rights and/or obligations hereunder at any time to any Affiliate of Celsius,” with or without notice.²⁴ Under the Debtors’ interpretation, Celsius would be able to transfer Customers’ rights and obligations to entities outside of the Debtors’ corporate structure without any notice. This does not make sense.

Section 32: Assignment

prohibition shall be void ab initio and of no effect. Celsius may assign or transfer these Terms and/or any or all of its rights and/or obligations hereunder at any time to any Affiliate of Celsius, with or without providing you with prior notice of the same. Celsius may assign or transfer these Terms and/or any or all of its rights and/or obligations hereunder at any time to any third party by providing prior notice. Any permitted assignment or transfer of or under these Terms shall be binding upon, and inure to the benefit of the successors, executors, heirs, representatives, administrators and permitted assigns of the parties hereto.

Certain Services Provided by Celsius EU UAB

Section 1

The Services provided in connection with specific Eligible Digital Assets listed on Appendix A are provided by the Affiliate Celsius EU UAB, a limited liability company incorporated in Lithuania.

"Celsius" Definition: Version 5 vs. Version 6

"Celsius" Definition: Redline

1. Introduction

Celsius Network LLC and its Affiliates

~~Celsius Network Limited~~ (collectively: "we," "our," "us," "Celsius," or
the "Company") provides the following Terms of Use (the "Terms") that
apply to our users

("you" or "User(s)") ~~when using or purchasing~~ and govern each User's access
to, and use of, Celsius' products and services as well as our mobile and
web-based application(s), our website(s), any software, programs,
documentation, tools, hardware, internet-based services, components, and any
updates (including software maintenance, service information, help content,
bug fixes or maintenance releases) provided to you by Celsius, directly or
indirectly, through our mobile application, our website, or any other online
services we provide (collectively, the "Services").

Services provided in connection with specific Eligible Digital Assets listed on
Appendix A are provided by the Affiliate Celsius EU UAB, a limited liability
company incorporated in Lithuania.